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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-11780-2021 (O&M)

Date of decision : 20.10.2023

Jagdish**.....Petitioner**

versus

State of Haryana and others**..... Respondents****CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ*********

Present :- Mr. Narender Kaajla, Advocate
for the petitioner.

Mr. Rajneesh Chadwal, AAG, Haryana.

Mr. Sandeep K. Sharma, Advocate
for respondents No.5 and 6.

*********RAJESH BHARDWAJ, J.**

Prayer in the present petition is for quashing the orders dated 13.07.2020 (Annexure P-1) passed by learned SDCO (respondent No.2) and order dated 05.10.2020 (Annexure P-2) passed by Learned DCO (respondent No.3) and order dated 01.04.2021 (Annexure P-3) passed by learned SCO(respondent No.4) vide which `restored the alleged watercourse being permanent watercourse at the Outlet RD 5000-L at Daulatpur Minor of Village Daulatpur wrongly and illegally without considering the facts and circumstances of the case.

It has been contended by counsel for the petitioner that the authorities below have restored watercourse in dispute as permanent watercourse by ignoring the evidence on record *vis khasra girdawari* wherein it has been established that the land in dispute is being cultivated by the petitioner since last 40 years. It is submitted that respondents No.5

and 6 filed the application for restoration of watercourse on the eastern boundary wall of Rectangle No.65 Killa No.22/1, Moga No.5000-L Daulatpur Minor, Village Daulatpur. He submits that on the application filed, respondent No.2 issued the notice for 09.06.2020. The decision was pronounced on 13.07.2020. He submits that the Sub Divisional Canal Officer, Water Services Sub Division, Pabra restored the watercourse temporarily for one year. He has submitted that petitioner as well as respondents No.5 and 6 being aggrieved by the order, filed their respective appeals against the order dated 13.07.2020. He submits that the appeal filed by the petitioner was illegally dismissed whereas the appeal filed by respondents No.5 and 6 was illegally accepted by the Divisional Canal Officer vide his order dated 05.10.2020. He has submitted that the Divisional Canal Officer has illegally modified the decision by restoring the watercourse as permanent watercourse without there being any evidence on record. He has submitted that aggrieved by the same, petitioner filed the revision petition before the Superintending Canal Officer. However, the Superintending Canal Officer without appreciating the evidence on record, dismissed the same vide impugned order dated 01.04.2021. It is submitted by counsel for the petitioner that as per jamabandis and khasra girdawari, the restoration of khal as held by the Courts below is totally against the revenue record. He submits that respondents No.5 and 6 had concealed the fact that they themselves placed reliance upon Chak Mogas No.5000-L Daulatpur Minor sanctioned by the Deputy Collector, Hisar in 1975 whereas, the site plan relied upon was fatal to the case because the watercourse claimed to be demolished and sought to be restored on the alignment of personal

watercourse of petitioners of Killa No.65//2, 9, 12, 19 and 22/1 whereas the respondents are already getting water from watercourse on the alignment lying on Killa No.65//5, 6, 15, 16 and this has been concealed by them. He submits that order passed by the DCO is based only on warabandi approved on 25.04.1975. He has submitted that the DCO has erred as the respondents never irrigated their fields from the alleged watercourse and thus, there was no occasion for restoring the same. He has submitted that on perusal of the map, it is clear that the cotton crop is already sown on the alignment 'AB' where the watercourse is shown to have been demolished and thus, there were no signs of the existence of the khal which was allegedly demolished by the petitioner. He has submitted that the observation of the authorities that they had visited the site is factually incorrect. He has submitted that in the garb of restoration of the watercourse, SDCO has sanctioned new watercourse which is totally unsustainable in the eyes of law. He has submitted that from the facts and circumstances of the case, there was no evidence regarding the existence of watercourse and thus, there was no question of restoring the same as has been held by the authorities below. He submits that the impugned orders being unsustainable in the eyes of law, deserves to be set aside.

Per contra, learned counsel for respondents No.5 and 6 has vehemently opposed the submissions made by counsel for the petitioner. He has submitted that the land in question is a joint land. He further vehemently submits that the map produced by the petitioner is also a forged one and thus, the same cannot be relied upon. He has submitted that the land being joint, partition proceedings are already pending

adjudication. He has submitted that watercourse existed since long and petitioner illegally demolished the same. He submits that as per warabandi and the record of warabandi existence of this watercourse is duly proved. He further submits that the authorities below not only appreciated the revenue record correctly but also inspected the site and found the signs of demolition of the watercourse. He has submitted that there being ample evidence on record, the impugned orders suffer from no infirmity as the watercourse has been rightly restored. He further submits that the site plan annexed by the petitioner as Annexure P-5/A cannot be relied upon. He submits that Rectangle No.66//15 never was in possession of the respondents. He submits that the petition being devoid of any merits deserves to be dismissed.

Learned State counsel in view of the reply filed on 12.11.2021 submits that on 12.07.2021 with the help of the police, the Duty Magistrate went to the spot and recorded statements of the private respondents and thus, the watercourse under question was successfully restored without breach of peace on the spot. A report dated 12.07.2021 to this effect was prepared by the Zildar Pabra. He has submitted that there being no perversity in the impugned orders passed, the petition deserves to be dismissed.

Heard. After hearing counsel for the parties and perusing the record, it has been found that there was a water taking point at Killa No.65//12x18 and delivery point at 61//22x65//3 as per the decision of Deputy Collector dated 31.10.2014, temporary Bharai of 0-5 minutes and Jharai of 0-12 minutes was allowed. Respondent No.2 visited the site himself and found that the watercourse in question was demolished about

20 feet in Killa No.65//22/1 and thus, the watercourse was found to be falling in the definition of Section 2(12) of the Haryana Canal and Drainage Act. It was found that the watercourse in question was running before its demolition since 1975. As per record, Khaka Plan was duly approved by Deputy Collector, Fatehabad Division, Hisar on 25.04.1975 and warabandi was also approved on 25.04.1975. Thus, there was an ample record showing the existence of this sanctioned watercourse. Petitioner as well as respondents No.5 and 6 filed their respective appeals against the order dated 09.06.2020 but the appeal of petitioner was dismissed by the Divisional Canal Officer vide his order dated 05.10.2020. Thereafter, petitioner filed the revision petition before the Superintending Canal Officer who also dismissed the same vide impugned order dated 01.04.2021.

There are concurrent findings by the authorities below against the petitioner. Thus, in the overall facts and circumstances, this Court does not find any infirmity in the impugned orders passed by the Appellate and Revisional Authorities and as such, the same are upheld. Consequently, the petition being devoid of any merits is hereby dismissed.

20.10.2023
m. sharma

(RAJESH BHARDWAJ)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No